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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner

v.

CHARLES ALLISON, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, SECOND DISTRICT

THOMAS W. SNEDDON, JR.,
District Attorney for
Santa Barbara County

PATRICK J. McKINLEY
Assistant District Attorney

GERALD McC. FRANKLIN
Senior Deputy District Attorney

Courthouse
1105 Santa Barbara Street
Santa Barbara, California 93101
(805) 568-2300

Counsel for Petitioner

November 28, 1988

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QUESTION PRESENTED

Particularly in light of Illinois v. Krull, 480 U.S. ____ , 107 S.Ct. 1160 (1987) and Griffin v. Wisconsin, 480 U.S. ____, 107 S.Ct. 3164 (1987), should the "extreme sanction" of suppression penalize the reasonable if arguably mistaken application to defendant of a previously-unconstrued statute by the governmental agency -- here, the Board of Prison Terms -- charged with the duty to interpret and enforce its provisions, where other officers make a search in good-faith reliance on the agency's interpretation.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

CHARLES ALLISON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL FOR THE SECOND APPELLATE DISTRICT, DIVISION SIX

The People of the State of California respectfully pray that a writ of certiorari issue to review the judgment and opinion of the California Court of Appeal for the Second Appellate District, Division Six, entered in the above-entitled proceeding on July 13, 1988.

OPINION BELOW

The opinion of the Court of Appeal is reported in part (see Cal. Rules of Court, rule 976.1) at 202 Cal.App.3d 1084, 249 Cal.Rptr. 218 and is reprinted in full in the appendix hereto, pp. A-1 through A-20, infra.

JURISDICTION

On April 17, 1987, Respondent Allison successfully moved to supress evidence incriminating him in felony burglary and receiving stolen property charges pending in the Superior Court for Santa Barbara County, California. After an unsuccessful attempt by the People to obtain interlocutory review of the suppression issue in the Court of Appeal by writ of mandate, the pending charges were dismissed on the trial court's own motion on June 17, 1987. The People then

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obtained review of the same issue by appeal.

On June 15, 1988 the Court of Appeal for the Second Appellate District, Division Six filed its opinion affirming the suppression order. On July 13th the court denied rehearing in the matter (Appendix B) but refiled its opinion (Appendix A) and certified for publication so much of the opinion as dealt with the threshold issue of the People's right to appeal following denial of an earlier petition by them for mandate. A timely petition for review of the issue presented here was filed in the California Supreme Court on July 25, 1988 and was denied by that court on September 29th (Appendix C).

On October 20, 1988 the Court of Appeal stayed issuance of its remittitur pending final disposition of this Petition for Writ of Certiorari (Appendix D).

This petition, filed within 60 days of September 29, 1988, is timely. This Court's jurisdiction is invoked under 28 U.S.C. §§ 1257(3) and 2106.

CONSTITUTIONS, STATUTES AND REGULATIONS INVOLVED

U.S. Const., amend. IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

U.S. Const., amend. XIV

"Sec. 1. No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . . "

Cal. Const., Art. 1, § 28

"(d) Right to Truth-In-Evidence . . . . [R]elevant evidence shall not be excluded in any criminal proceeding . . . ."

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Cal. Penal Code

§ 3000

"The Legislature finds and declares that the period immediately following incarceration is critical to successful reintegration of the offender into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counseling necessary to assist parolees in the transition between imprisonment and discharge. . . . Nothwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter:

(a) At the expiration of . . . a term of imprisonment imposed pursuant to Section 1170, . . . the inmate shall be released on parole for a period not

exceeding three years, unless the [B]oard [of Prison Terms] for good cause waives parole and discharges the inmate from custody of the [D]epartment [of Corrections]."

§ 3001

"(a) Notwithstanding any other provision of law, when any person referred to in subdivision (a) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement, the board shall, within 30 days, discharge such person from parole, unless the board, for good cause, determines that such person will be retained on parole. The board shall make a written record of its determination and transmit a copy thereof to the parolee."

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Cal. Code of Regulations

Tit. 15, § 2511

"Notice of Parole

"(a) Definition. The notice of parole is a general description of rules and regulations governing parolees.

"(b) Notice. The notice of parole shall read as follows:

" . . . .

"4. Search. You and your residence and any property under your control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer."

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STATEMENT OF THE CASE*

Respondent Allison was sentenced (apparently erroneously) to serve five years, eight months in prison by the Monterey County Superior Court in 1983 (Writ C.T. 38). His sentence was later reduced to four years, four months by the trial court (Writ C.T. 37), and he was released from prison on parole on July 24, 1986 having served 224 days more than he should have. Credit for that 224 days was deducted by the Board of Prison Terms from Allison's three-year parole (Writ C.T. 28), as required by the holding of In re

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* References to the Clerk's Transcript of the habeas corpus proceeding in In re Allison (B026511) are signalled as "Writ C.T." followed by the page and line numbers. The Clerk's Transcript in People v. Allison, the present matter, is signalled "C.T." References to pages and lines of the Reporter's Transcript of the various proceedings in the Superior Court, together with the date of the hearing, are signalled, e.g., "R.T. 4/15 5:4-10."

Kemper (1980) 112 Cal.App.3d 434, 169 Cal.Rptr. 513 (a case involving a prisoner with excess-prison-time credits who was paroled for one year under the predecessor of the present statute, which provides for parole for up to three years and which was in effect when Allison was released).

Penal Code section 3001(a), applicable to Allison's parole, provides that a person who "has been released on parole from the state prison, and has been on parole continuously for one year since release from confinement," shall be discharged from parole "unless the board, for good cause, determines that such person will be retained on parole."

Allison reported regularly to his parole officer for nearly 12 months and appeared eligible for the early discharge contemplated by section 3001(a) (R.T. 4/15 5:4-10; 9:12-22). But on July 17, 18 and

23, 1986, Santa Barbara sheriff's investigators, acting on information that Allison was again involved in criminal activity, searched his residence and, later, his van in the company of his parole officer or with that officer's authorization and seized evidence implicating Allison in two burglaries (C.T. 158:27 - 159:8; 192:12-20; 232:5 - 238:10). His parole was revoked, and he was charged with multiple counts of burglary and receiving stolen property. Allison's several "serious felony" and other felony prior convictions were alleged as enhancements (C.T. 258-282).

Nearly five months after his arrest, Allison petitioned the Santa Barbara Superior Court for writ of habeas corpus, claiming that the parole hold which kept him in jail without bail was invalid because he was not lawfully on

parole in July, when the hold was imposed (Writ C.T. 1). By Allison's reasoning, the 224-day excess-prison-time credit should have been deducted by the Board of Prison Terms from the first year of his three-year parole term. Had that been done, Allison would have been eligible for early termination of his parole pursuant to Penal Code section 3001(a) some four and a half months from the actual date of his release from confinement in July, 1985, well before evidence of his recidivism came to light.

The superior court granted Allison's petition on February 20, 1987 (Writ C.T. 46).[1/] Allison then promptly

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1/ The Board of Prison Terms (the Real Party in Interest in the writ proceedings), appealed, ultimately without success. (In re Allison [Cal.App.] B026511; review denied and opn. deleted from official reports by order of the Supreme Court.)

moved the court in his pending felony prosecution to suppress the evidence seized in the warrantless parole search in July, 1986, reasoning that since he was not lawfully on parole at the time, the parole searches were unlawful (C.T. 301-305). The People opposed his motion, arguing that the complained-of search was undertaken by Santa Barbara officers in good-faith reliance on Allison's apparent status as a parolee and his obligation, as such, to submit to a search under the circumstances (C.T. 306-316; R.T. 4/17 22:20-24).

Allison's suppression motion was granted. The pending charges were later dismissed because of the prosecution's inability to proceed without the suppressed evidence, and the People appealed (C.T. 339-341; R.T. 4/17 14:3-5).

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The Court of Appeal affirmed the trial court's order suppressing the evidence. The court acknowledged this Court's opinion in Illinois v. Krull, 480 U.S. _____, 107 S.Ct. 1160 but decided "that suppression is appropriate here under the '"collective knowledge"' rule, ascribing to searching or arresting officers the collective knowledge of law enforcement agencies" generally (including, apparently, the Board of Prison Terms). (App., pp. A-15 - A-16.) The People had argued that the Board of Prison Term's conclusion that Allison was obliged to remain on parole for a full 12 months following the date of his actual release from confinement before he was eligible for early termination seemed a not-unreasonable interpretation of the pertinent statute. That interpretation apparently was based on its reading of the

"on-parole-continuously-for-one-year-since-release-from-confinement" language of Penal Code section 3001(a). And the Board's interpretation appeared to have found favor with another district of the Court of Appeal in a remarkably similar case (In re Welch (1987) 190 Cal.App.3d 407, 235 Cal.Rptr 470; review denied) and (as the People pointed out in their petition for rehearing) with at least four justices of the California Supreme Court when it ordered In re Allison not to be published.

Nevertheless, the Court of Appeal ruled that "Suppression of evidence here would discourage the careless maintenance of prison records and consequent improper searches of past parolees. The exclusionary rule here serves to prevent this very unconstitutional conduct and to

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advance the purpose of careful record keeping." (App., pp. A-18 - A-19.)

(As this Court is aware (California v. Rooney, 480 U.S. ____, 107 S.Ct. 2852 (1987)), California courts are required by article 1, section 28 of the state's Constitution to apply only federal constitutional standards in ruling on a motion to suppress evidence in a criminal case.)

The People's petition for rehearing was denied, and the California Supreme Court denied review.

REASONS FOR GRANTING THE WRIT

I

THE COURT OF APPEAL INCORRECTLY DECIDED THE FEDERAL QUESTION BEFORE IT WHEN, NOTWITHSTANDING THE TEACHINGS OF THIS COURT, IT SUPPRESSED EVIDENCE BY A DECISION WHICH COULD NOT FURTHER THE LEGITIMATE ENDS OF THE EXCLUSIONARY RULE

Unless there is a difference of constitutional dimension between a

warrantless search by police officers in good-faith reliance on a statute which is unconstitutional but not "clearly" so (as to the fruit of which the "extreme sanction" of exclusion has no legitimate application -- Illinois v. Krull, supra, 107 S.Ct. 1160, 1167) and a warrantless search by police officers in good-faith reliance on the reasonable if mistaken interpretation of a previously-unconstrued statute by the executive agency which is duty-bound to construe and enforce it, the Court of Appeal erred in suppressing important evidence of a recidivist parolee's resumption of criminal activity.

Background

The problem facing the Board of Prison Terms in Allison's case was this: Given the Legislature's express finding "that the period immediately following incarceration is critical to successful

reintegration of the offender into society and to positive citizenship" (Cal. Pen. Code, § 3000), and its direction that a parolee shall be eligible for early termination of his parole if, and only if, he "has been on parole continuously for one year since release from confinement" (Cal. Pen. Code, § 3001(a)), how should Allison's excess-prison-time credit of 224 days be deducted from his three-year parole term? From the first 12 months of that term (thus making him eligible for termination of his parole supervision after only four and a half months)? Or from the far end of the three-year term.

The Board chose the latter course.

Ruling On The Writ

In In re Allison, first the trial court and then the Court of Appeal concluded the Board was wrong and held that the 224-day credit should have been

deducted from the first 12 months of Allison's parole term. In doing so, the Court of Appeal expressly disagreed with the intervening holding of another appellate district in In re Welch, supra, 190 Cal.App.3d 407 (rev. denied) on precisely similar facts. The California Supreme Court denied review in In re Allison but deleted the Court of Appeal's one-issue opinion from the official reports.2/

Ruling On The Suppression Motion

When it later reviewed the superior court's supression order in the case at bench, the Court of Appeal rejected the

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2/ The likely significance of the deletion order was that "a majority of the justices consider[ed] the opinion to be wrong in some significant way, such that it would mislead the bench and bar if it remained as citable precedent." (Grodin, The Depublication Practice of the California Supreme Court, 72 Cal.L.Rev. 514, 514-515 (1984).)

argument that the Board's resolution of the problem of how to apply Allison's excess-prison-time credits was at least a reasonable one (particularly in view of the subsequent conflicting judicial opinions on the question), even if it may have been mistaken. The court ungenerously characterized the Board's action as "the careless maintenance of prison records" (App. A-18) which the court regarded as "the very unconstitutional conduct" that "the exclusionary rule . . . serves to prevent" (App. A-19).

The Ruling Conflicts With Illinois v. Krull

It has rightly been observed that "an [executive] agency has the power to construe [a] statute as part of the power to execute it" (Carson v. Block (7th Cir. 1986) 790 F.2d 562, 565, cert. den. 479 U.S. 1017, 107 S.Ct. 669). Courts, in

their turn, give "substantial deference" to "the interpretation of the agency charged with administration of the statute" (Quern v. Mandley, 436 U.S. 725, 738 (1978)) if the interpretation is "reasonable," even though that interpretation "may not be the only one permitted by the language" of the statute or regulation in question and may not be "'. . . the result [this Court] would have reached had the question arisen in the first instance in judicial proceedings'" (Udall v. Tallman, 380 U.S. 1, 4, 16 (1965)). See Griffin v. Wisconsin, 480 U.S. ____, 107 S.Ct. 3164, 3168-69 (1987).

Surely, the reasonable officer contemplated in Illinois v. Krull, supra, 107 S.Ct. 1160 will reflect on the apparent meaning and scope of a statute in light of the facts of his case before he

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acts in obedience to it, or else he will not have acted in "good faith."

Governmental agencies, too, must act reasonably and in good faith in construing and applying the necessarily general language of a statute to the particulars of the case before it. By the same token, the agency cannot reasonably be held to a higher standard than "reasonableness" in the performance of that function by a court which reviews its actions.

The Board of Prison Terms construed and applied Penal Code section 3001(a) to the facts of Allison's case and determined that, notwithstanding his seven-and-a-half-month excess-prison-time credit, Allison should remain subject to parole supervision for at least 12 months.

Objectively speaking, the statute as thus construed "[did] not violate

clearly established statutory or constitutional rights of which a reasonable man would have known" even if the Board's construction was mistaken (Illinois v. Krull, supra, 107 S.Ct. at 1170). For their part, Santa Barbara sheriff's officers relied in acknowledged good faith (App. A-18) on Allison's apparent status as a parolee who was subject by law to warrantless search and seizure as a condition of his parole -- a status not even Mr. Allison saw fit to challenge until long after revocation of his parole.

II

IF IT IS NOT ALREADY PLAIN FROM THIS COURT'S TEACHINGS THAT A LAW ENFORCEMENT AGENCY CANNOT BE HELD TO A HIGHER STANDARD THAN "REASONABLENESS" IN ITS APPLICATION OF A STATUTE TO ITS OWN PERFORMANCE, THE POINT SHOULD BE MADE EXPLICIT.

The probation and parole statutes and regulations of the several states and

the federal government vary in their specificity, but all oblige the executive agencies which must apply and enforce them to excercise judgment and discretion in carrying out that sensitive duty.

The question confronting the parole board in this case (a question not previously addressed in a court decision) concerned the appropriate method of allocating excess-prison-time credits to a prisoner's three-year parole term. No doubt, equally subtle and troublesome questions of law regarding the correct application of general legislative guidelines to the specifics of a given case arise frequently, not only in parole and probation offices around the country but in the course of the government's supervision of schools, hospitals and regulated industries as well.

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In our respectful submission, the correct answer to the question on appeal is implicit in the rationale of this Court's recent decisions in United States v. Leon, 468 U.S. 897 (1984), Illinois v. Krull, supra, 107 S.Ct. 1160 and Griffin v. Wisconsin, supra, 107 S.Ct. 3164: Executive agencies, like individual police officers, must act reasonably with respect to an individual's Fourth Amendment rights, but they should not be penalized for having been reasonably mistaken in their actions. (Cf. Hill v. California, 401 U.S. 797, 804-805 (1971).)

If that is so, this petition might be disposed of summarily under Rule 23.1. But if the approach taken by the Court of Appeal in this case is not merely idiosyncratic, an explicit discussion of the question will bring welcome clarification.

CONCLUSION

For the foregoing reasons petitioner respectfully requests this petition for certiorari be granted.

Respectfully submitted,

THOMAS W. SNEDDON, JR.,
District Attorney

PATRICK J. McKINLEY
Assistant District Attorney

GERALD McC. FRANKLIN
Senior Deputy District Attorney

Attorneys for Petitioner

November 28, 1988

APPENDIX A

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,	)	2d Crim. No. B028568
	)	(Super.Ct. No. 162334)
Plaintiff and Appellant,	)	(Santa Barbara County)
	)	
v.	)	[F I L E D]
	)	[July 13, 1988]
CHARLES ALLISON,	)	
	)	
Defendant and Respondent.	)	
	)	

The People through a petition for writ of mandate challenge a trial court's order suppressing evidence seized during a parole search pursuant to Penal Code section 1538.5.1/ The Court of Appeal

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1/ All further statutory references are to the Penal Code unless otherwise specified.

*Pursuant to Rule 976.1 of the California Rules of Court this opinion is certified for partial publication. The portions of this opinion to be deleted from publication are identified as those portions between double brackets, e.g., [[/]].

summarily denies the petition. May the People later appeal the trial court's order? Yes. Here, the People may appeal an order dismissing an information following the suppression of evidence used against defendant Charles Allison.

[[We affirm. The time of defendant Allison's parole review must be measured from the date he should have been released from prison. We also decide that the "'collective knowledge'" rule requires the suppression of evidence here. (People v. Ramirez (1983) 34 Cal.3d 541, 547; People v. Dickens (1984) 163 Cal.App.3d 377, 381.)

FACTS

In July 1986 sheriff's officers learned that Allison had used a stolen credit card to purchase gasoline. A check of official criminal records disclosed that he was a parolee who had consented to

warrantless searches. On July 17, 18, and 23, 1986, officers searched Allison's residence and van with the consent of his parole officer and discovered stolen property. The prosecutor then charged Allison with multiple counts of burglary and possession of stolen property.

Allison filed a petition for writ of habeas corpus in the trial court and successfully argued that he had been released from parole prior to July 1986 due to the failure of the California Board of Prison Terms to review and retain his parole status one year and 30 days after he should have been released from prison. (In the former criminal proceeding, Allison's sentence had been modified, after his incarceration, from a prison term of five years and eight months to four years and four months.) The trial court then granted Allison's motion to

suppress the stolen property because he was not on parole at the time of the search and seizure. Since the People were unable to proceed with the prosecution, the trial court dismissed the information. (§ 1385.)

We decided the People's appeal from the trial court's order in the habeas corpus proceeding in In re Allison (Cal.App., opn. (B026511) deleted upon direction of Supreme Ct. by order dated May 19, 1988). There we disagreed with In re Welch (1987) 190 Cal.App.3d 407, and held that Allison's parole period automatically expired one year and 30 days after he should have been released from prison. (In re Allison (Cal.App.) supra.) We felt the language of section 3001 and In re Kemper (1980) 112 Cal.App.3d 434, compelled that result. (In re Allison (Cal.App.) supra.) The Board of Prison

Terms had noted Kemper when recording Allison's modified sentence but failed to calendar a parole review date within one year and 30 days after Allison should have been released from prison.

Here the People appeal the trial court's dismissal of the information and argue that 1) the trial court incorrectly ruled that Allison was not on parole during the time of the July 1986 searches and 2) suppression of the evidence fails to promote the purpose of the exclusionary rule because both Allison's parole officer and sheriff's officers acted in the good faith belief that he was on parole and subject to consensual search.]]

DISCUSSION

I.

The People first challenged the trial court's order suppressing evidence through a petition for writ of mandate. We denied

that petition by minute order. Allison contends that subdivision (j) of section 1538.5 and People v. Carrington (1974) 40 Cal.App.3d 647, permit the People to review an order suppressing evidence either by extraordinary writ or appeal, but not both. The People's election to contest the suppression order by writ of mandate, he asserts, precludes their appeal of the order. We disagree and decide that the earlier determination does not prevent this appeal.

Subdivision (j) of section 1538.5 provides in part that "[i]f the people prosecute review by appeal or writ to decision, or any review thereof, in a felony or misdemeanor case, it shall be binding upon them." Carrington decided that a minute order denying a prosecution petition for writ of mandate challenging a suppression ruling constituted review by

"'writ to decision'" under subdivision (j) of section 1538.5. "The plain command of [subdivision (j)] is that once the People obtain a decision from the appellate court, either by appeal or by writ, they may not relitigate the lawfulness of the search in the trial court or on appeal; they are bound by the decision. [Citations.]" (People v. Carrington, supra, 40 Cal.App.3d at p. 650.) The appellate court reasoned that the stated legislative purpose of subdivision (j) was to conserve judicial effort in resolving search and seizure questions. (Ibid.)

Carrington concluded that the word "decision" in subdivision (j) did not contemplate a written opinion. The court reasoned that "decision," in common usage, meant "'a determination arrived at after consideration.' [Citation.]" (People v. Carrington, supra, 40 Cal.App.3d at p.

650.) Denial of a petition for writ by minute order, the court explained, was a considered decision: "The denial of the People's petition for a writ contesting a trial court's grant of a motion to suppress evidence means resolution of the issue based on a full record of the evidence presented at the hearing on the motion. Appellate courts do not deny such petitions without consideration." (Ibid.)

We do not quarrel with this recital of the obvious. Nevertheless, despite our summary denial of a writ petition after an exhaustive consideration of its merits, the Phoenix may rise again. In People v. Medina (1972) 6 Cal.3d 484, 491, our Supreme Court noted that writ petitions under section 1538.5, like writs of mandate and prohibition, are often confined to questions of first impression, and may come within a principle of

discretionary denial.

The Medina court discussed why a denial of a writ petition is not necessarily a denial on the merits. "When the record of the pretrial hearing indicates that the defendant unsuccessfully moved to suppress several items of evidence, some of which appear to have been seized validly and others invalidly, an appellate court may deny the petition without opinion in anticipation that the People will not insist on using inadmissible evidence at trial. It may take the view that the use of relatively minor items of evidence will be harmless beyond a reasonable doubt, and it may consider that the picture of the entire case developed at trial will enable it to make a better informed appraisal of the harmless error problem on appeal from a judgment of conviction. Such appraisal on

appeal may result in a determination favorable to the defendant even though on denial of the pretrial writ petition the appellate court was tentatively of the opinion that admission of apparently minor items of evidence would be harmless. [¶] In light of the various considerations which may impel appellate justices to vote to deny a defendant's petition for a pretrial writ under section 1538.5 without opinion, we believe that giving such a minute order conclusive effect on an appeal from a subsequent judgment of conviction would amount to improper conjecture and surmise as to the theoretically possible mental processes of the justices.[2/] [Citation.]" (People v. Medina, supra, 6 Cal.3d at pp. 491-492.)

2/ We assume it is not the presence of mental processes that is theoretical.

In footnote 6 at page 491, the Medina court stated that "[t]he denial without opinion of a petition for a writ of mandate or prohibition is not res judicata except when the sole possible ground of denial was on the merits or it affirmatively appears that the denial was intended to be on the merits. [Citations.]" The Carrington court said that the Medina rule allowing for further review after summary denial of a writ does not apply when the writ is sought by the People. (People v. Carrington, supra, 40 Cal.App.3d at p. 649.) This assumes that a summary denial of a writ petition is a decision on the merits. It is our view that irrespective of who seeks review, a summary denial of a writ petition is not necessarily a decision on the merits.

"In the present case the People's petition for a writ of mandate under

section 1538.5 was denied without opinion. The record in that case, which we judicially notice, does not indicate whether the denial of the petition was on the merits or whether it was a discretionary denial. In the absence of an affirmative indication in the record that the petition was determined on the merits we may not conclude that it was so determined. Since under the state of the record it may also be concluded that the appellate court acted within the principle of discretionary denial, we may not hold that the determination against the People was conclusive under the doctrine of res judicata or was such that it must be adhered to under the doctrine of the law of the case.

"In reaching this conclusion we point out that we are in accord with Carrington that the term 'decision' in

subdivision (j) of section 1538.5 does not mean a decision expressed in a written opinion. A decision affirmatively indicating that the denial of the petition was on the merits satisfies the mandate of the statute." (People v. Paris (1975) 48 Cal.App.3d 766, 770.)

We agree with Paris. Here we denied the People's petition for writ of mandate without opinion and as an act of discretionary denial. That appellate order does not conclusively evidence that denial was upon the merits and so, it neither bars nor governs this decision. (People v. Paris, supra, 48 Cal.App.3d at p. 770; Appeals and Writs in Criminal Cases (Cont.Ed.Bar 1982) § 2.88, pp. 274-275.) We, therefore, disagree with that reasoning of People v. Carrington, supra, that compels a different result.

[[II.

The People contend that the trial court incorrectly ruled that Allison was not on parole at the time of the July 1986 parole searches. They cite In re Welch, supra, 190 Cal.App.3d 407, 411, to support their contention that section 3001 does not automatically discharge a parolee from parole if the Board of Prison Terms fails to act in a timely manner. As we have stated, however, we decided this issue in In re Allison (Cal.App.) supra, and, there being no miscarriage of justice, abide by our decision in that appeal. "'Questions determined by an intermediate appellate court constitute the law of the case after the decision becomes final. In the absence of exceptional circumstances of hardship and injustice the need for attributing finality to considered judicial determinations compels adherence

to the previous decision. [Citation.]' [Citations.]" (People v. Shuey (1975) 13 Cal.3d 835, 848.)

III.

The People also argue that suppression of the evidence would not promote the purpose of the exclusionary rule because sheriff's officers and Allison's parole officer acted reasonably and in good faith reliance that Allison was on parole. They point out that the primary purpose of the exclusionary rule is to deter unlawful police conduct and that application of the rule is restricted to those instances where that remedial purpose is "effectively" advanced. (Ilinois v. Krull (1987) 480 U.S. ___ [94 L.Ed.2d 364, 373]; People v. Tellez (1982) 128 Cal.App.3d 876, 881; People v. Washington (1982) 131 Cal.App.3d 434, 440.) We decide that suppression is

appropriate here under the "'collective knowledge'" rule, ascribing to searching or arresting officers the collective knowledge of law enforcement agencies. (People v. Ramirez, supra, 34 Cal.3d at p. 552; People v. Dickens, supra, 163 Cal.App.3d at pp. 380-381.)

Ramirez concerned an arrest and subsequent booking search based upon police information that a bench warrant for Ramirez existed. Although the arresting officer believed the warrant was outstanding, it had, in fact, been recalled six months earlier. Our Supreme Court acknowledged the officer's good faith reliance upon the erroneous information he received but reasoned that recall of the warrant was or should have been within the "'collective knowledge'" of the police: "Here we decline only to validate an arrest made on the basis of

data which a law enforcement agency knew or should have known were in error because of inadequate or negligent record-keeping." (People v. Ramirez, supra, 34 Cal.3d at p. 552.)

Similarly, in People v. Dickens, supra, the court invalidated the rearrest and subsequent search of a defendant who had already been arrested on those charges. The court reasoned that the rearrest was the product of "'. . . inadequate or negligent record-keeping.'" (People v. Dickens, supra, 163 Cal.App.3d at p. 381.) The court also observed that United States v. Leon (1984) 468 U.S. 897, 923, did not compel another result. There the United States Supreme Court declared that it was necessary to consider the objective reasonableness of those officers executing the warrant as well as "the officers who originally obtained it or who

provided information material to the probable-cause determination." (Ibid., fn. 24.) Thus, the good faith reliance of the officer executing the warrant is not decisive.

No doubt the searching officers here acted in good faith reliance upon information conveyed through official channels. Law enforcement officials, however, are collectively responsible for keeping those channels free of incomplete or inaccurate information. (People v. Ramirez, supra, 34 Cal.3d at p. 547.) The Board of Prison Terms had noted that Allison's sentence had been reduced and cited In re Kemper on Allison's case summary, but it failed to calendar a correct parole review date. Suppression of evidence here would discourage the careless maintenance of prison records and consequent improper searches of past

parolees. The exclusionary rule here serves to prevent this very unconstitutional conduct and to advance the purpose of careful record keeping.]]

Accordingly, Allison's motion to dismiss the appeal is denied. [[The order of the trial court suppressing the evidence is affirmed.]]

CERTIFIED FOR PARTIAL PUBLICATION.

GILBERT, J.

We concur:

STONE, P.J.

ABBE, J.

William L. Gordon, Judge
Superior Court County of Santa Barbara

Thomas W. Sneddon, Jr., District Attorney, Gerald McC. Franklin, Senior Deputy District Attorney, for Plaintiff and Appellant.

Glen Mowrer, Public Defender, Michael C. McMahon, Assistant Public Defender, Seymour Weisberg, Deputy Public Defender, for Defendant and Respondent.

APPENDIX B

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,	2d Crim. No. B028568
	(Super.Ct. No. 162334)
Plaintiff and Appellant,	(Santa Barbara County)
v.	ORDER CERTIFYING OPINION FOR PARTIAL PUBLICATION AND DENYING REHEARING
CHARLES ALLISON,	
Defendant and Respondent.	[F I L E D]
	[July 13, 1988]

THE COURT:

The opinion in the above entitled matter filed on June 15, 1988, was not certified for partial publication in the Official Reports. For good cause it now appears that the opinion should be partially published in the Official Reports and it is so ordered.

The opinion in this matter has been retyped incorporating areas for

partial publication and is attached hereto. This constitutes no change in judgment.

Appellant's petition for rehearing is denied.

APPENDIX C

[F I L E D]
[SEP 29 1988]

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

2nd District, Division 6, No. B028568
S006550

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PEOPLE, Appellant,

v.

CHARLES ALLISON, Respondent

Appellant's petition for review DENIED.

LUCAS
Chief Justice

APPENDIX D

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,	)	2d Crim. No. B028568
	)	#162334
Plaintiff and Appellant,	)	
	)	
v.	)	ORDER
	)	
CHARLES ALLISON,	)	[F I L E D]
	)	[Oct. 20, 1988]
Defendant and Respondent.	)	
	)	

Good cause having been shown, issuance of the Remittitur is stayed pending consideration by the United States Supreme Court of a timely Petition for Writ of Certiorari to be filed by appellant. This stay is to remain in effect until disposition of the Petition. If the Petition is granted, this stay is to remain in effect until the matter is remanded or otherwise disposed of by the United States Supreme Court.

GILBERT

ACTING Presiding Justice